

STAFF REPORT PUBLIC HEARING

Item # 7a

SUBJECT: OA16-05 – Zoning Ordinance Text Amendment to Reduce

Maximum Building Heights in the C-4 District

DATE OF MEETING: September 12, 2017

STAFF CONTACT: Sally Hankins, Town Attorney

SUMMARY and RECOMMENDATIONS:

The Planning Commission conducted a public hearing on April 20, 2017 to receive comments about a proposed ordinance to decrease in maximum heights allowed in the C-4 Zoning District. A map of the C-4 Zoning District can be found at **Attachment 1** to this Staff Report. According to the meeting minutes, seven speakers offered comments: three speakers opposed the draft ordinance, three speakers supported the draft ordinance, and one speaker said she would withhold her comments on the draft ordinance until the next group. In addition, one person sent an email expressing her support of the height reduction.

As a result of that hearing and after further discussion, the Planning Commission adopted a motion on May 4, 2017, recommending that Town Council adopt the following changes to Zoning Ordinance Article 4, Section 9.8, which sets forth the Height Standards in the C4 zoning district. These proposed changes are set forth below, and also at **Attachment 2** to this Staff Report; language that is proposed to be added is shown as double-underlined text, and language that is proposed to be deleted is shown as strike-through text:

9.8 Height standards.

Buildings may be erected up to 45 feet in height provided except that:

- 1. Any business building or part of such building which is located within 50 feet of any residential district shall not exceed 35 feet in height.
- 2. A public or semi-public building such as a school, church, or library, may be erected to a maximum height of 60 feet provided that required front, side and rear yards shall be increased one foot for each foot in height over 50 feet. Any building may be erected to a height of 60 feet provided that the front façades of the building above

35 feet shall be set back at least ten additional feet from the front façade or front property line, whichever is greater distance from the public street.

3.—Notwithstanding the provisions of Section 9.8.2., for properties in common ownership that abut North 21st Street, the building height at the front façade or the front property line, whichever is the greater distance from the public street, may be up to 35 feet in height; and up to 50 percent of the width of the front façade may be up to 65 feet in height, and those portions of the building greater than ten feet behind the front façade maybe a maximum of 75 feet in height.

For adjacent properties in common ownership that exceed an aggregate of two contiguous acres in size located in the C-4 district that abut East "O" Street, the maximum building height is 65 feet.

- 3. 4. Church spires, belfries, cupolas, monuments, water towers, chimneys, flues, and flag poles of any height, and television antennas up to 125 feet in height, are exempt from height regulations. Parapet walls may be up to a maximum of 4 four feet above the height of the building on which the walls rest.
- 5. The zoning administrator may grant an administrative modification of these height limitations upon recommendations of the board of architectural review, which shall include a written explanation of how any such modification will better accomplish the purpose and intent of the district.

The proposed amendments shown above have the following effects:

The proposed amendments keep in place:

- 1. The existing maximum height of 45 feet that applies in the typical case, when no exception applies; and
- 2. The existing requirement that business buildings within 50 feet of a residential zoning district be limited to a maximum height of 35 feet.

The proposed amendments no longer allow:

1. Construction of any building, other than "public" and "semi-public" buildings, to a height greater than 45 feet.

2. The Town or Zoning Administrator to grant a modification to the maximum height upon recommendation of the Board of Architectural Review.

The proposed amendments add:

1. The category of "public" and "semi-public" buildings, allowing them to reach a maximum height of 60 feet, provided the required minimum front, side, and rear yards are increased one foot for each foot in height over 50 feet.

According to the minutes and Staff Reports from the Planning Commission meetings (see <u>Attachments</u> 3 through 6), the Planning Commission considered, but rejected, the following ideas:

- 1. Proximity to Residentially Zoned Districts. The Planning Commission recommended that any business building within 50 feet of a residentially zoned district have a maximum height of 35 feet. However, it considered and rejected a proposal that would require any business building within 200 feet of a residentially zoned district to have a maximum height of 30 feet. The Planning Commission commented that the maximum height for business buildings adjacent to residential districts should not be shorter than the maximum height allowed in such residential districts, which is 35 feet.
- 2. <u>Number of Stories</u>. The Planning Commission rejected the idea of measuring maximum height in units of both "feet" and "stories." For example, the Planning Commission rejected the following language: "Buildings may be erected up to a maximum of <u>three stories and</u> 45 feet in height." (Emphasis added)

The Zoning Ordinance defines a "story" to be the space between the surface of the floor and the surface of the floor next above it or, if there is no floor above it, then the space between the floor and the ceiling next above it. (A basement can be a "story" if it is at least partially above grade under some circumstances) Based on this definition, a "Story" is not necessarily related to a particular height. For example, in a building with a 30-foot tall grand lobby, the lobby would count as only one story, even though it is tall enough to accommodate two floors. A "story" is generally significant only to the look of the interior of a building, and not to the exterior.

The following were mentioned in the Planning Commission Staff Report or the Planning Commission discussion as reasons for rejecting "stories" as part of a height limitation:

- a) The Adams Mill Building located at 201 North 23rd Street is four stories tall. If the maximum height limit were "three stories and 45 feet," as proposed, the Adams Mill Building would exceed the "three story" maximum, causing it to be non-conforming.
- b) The building located at 170 West Main Street is 30 feet tall and 2½ stories, according to the approved site plan, and is also within 50 feet of a residential zoning district. If the maximum height within 50 feet of a residential zoning district were "two stories and 30 feet," as proposed, then the building would exceed the "two story" maximum, causing it to be non-conforming.
- c) The building located at 142-144 East Main Street (located just south of the intersection of Hatcher Avenue and Main Street) is within 200 feet of a residential zoning district. If the amendment requires all properties located within 200 feet of a residential zoning district to measure no more than "two stories and 30 feet," as proposed, then this building would become nonconforming because it is documented by the Town of Purcellville as 2½ stories.

BACKGROUND:

On October 11, 2016, Town Council adopted Resolution 16-10-02 (<u>Attachment 7</u>), which initiated a Zoning Ordinance Text Amendment to reduce the maximum building heights allowed in the C4 zoning district. The Town Council requested that the Planning Commission prepare the text amendment, forward it to the Town Council for initial comment, conduct a public hearing, and then forward the final text to the Town Council with a recommendation.

Town Council considered the initial draft of the text amendment from the Planning Commission on March 28, 2017 and, at that meeting, expressed no specific objections to the proposed text. However, Councilmember McCollum questioned whether the amendment would cause either of the old mill buildings (Adams Mill and Magnolias) to become nonconforming. (See <u>Attachment 8</u>: Minutes of March 28, 2017 Town Council Meeting)

ISSUES:

Issue 1. Meaning of "Semi-Public". The proposed height standards would allow "public" and "semi-public" buildings to measure up to 60 feet in height. "Semi-public" is not defined by the Zoning Ordinance. The Town Council may wish to define "semi-public" so that the Zoning Administrator understands how the governing body intends the term to be interpreted and applied.

Issue 2. Nonconformities. Buildings that exceed the height of (a) 45 feet, or (b) 35 feet within 50 feet of a residential zoning district, will be "nonconforming" under the proposed amendments. The question of whether the proposed amendments would cause some existing buildings to become nonconforming was raised by a member of Town Council at the March 28, 2017 Town Council meeting, by members of the Planning Commission, and by speakers at the Planning Commission public hearing. Absent surveyed height data for existing buildings, it is difficult to clearly answer the question of whether existing buildings will be rendered "nonconforming" as a result of the proposed amendments to the Height Standards. It is possible that some existing structures might exceed the proposed 45-foot height limit, as described below.

Properties that have been identified as possibly becoming nonconforming as a result of the proposed amendments include:

- a) <u>Vineyard Square</u>. The Vineyard Square project was approved under the current C-4 Height Standards and is subject to an approved site plan that allows buildings to be constructed at heights exceeding 45 feet. Buildings within Vineyard Square may be constructed in accordance with the approved site plan, for so long as the site plan remains valid. The site plan was approved on September 16, 2016, which means that under current law it would remain valid through September 15, 2021. However, all buildings that are neither "public" nor "semi-public" that are constructed in Vineyard Square at a height exceeding 45 feet would be "nonconforming" under the proposed amendments.
- b) 201 N. 23rd Street & Magnolias at the Mill. The historic John J. Dillon Building (aka Adams Mill Building, and former Bike Shop across from Train Station and Magnolias), located at 201 North 23rd Street, and the historic building (now Magnolias at the Mill) located at 198 21st Street might both exceed the proposed height limits. To staff's knowledge, there is no record of the height of these buildings. A survey would need to be performed in order to obtain accurate and certified measurements.

i. <u>Magnolias at the Mill</u>: Laypersons who have measured Magnolias with drones or other means measure it to be roughly 57 feet high at the rear of the building, and about 40 feet high at the front of the building. Because the ordinance requires that the height be measured from the average finished grade, the official building height would be somewhere between 40 feet and 57 feet, assuming those measurements were accurate.

While it is possible that Magnolias will be nonconforming under the proposed C-4 Height Standards, it is also possible that Magnolias is already nonconforming today, such that the proposed amendments would not cause additional harm. Assuming the Magnolias building is taller than 45 feet, it appears that it was nonconforming prior to the amendments to the C-4 Height Standards adopted by the Town in 2008 (the "2008 Amendments") and remained nonconforming after the 2008 Amendments. This is because:

(1) While the 2008 Amendments created a special/taller height standard for properties that are in "common ownership" and "abut 21st Street" (the "21st Street Height Standard"), it is unclear whether the Magnolias building qualifies for the special/taller height standard because, while it abuts 21st Street, it is unclear whether the property is in "common ownership."

Even if the 21st Street Height Standard *did* apply to Magnolias, it would likely not help Magnolias because the 21st Street Height Standard requires that at least half of the front building façade measure no more than 35 feet tall, and it appears as though the entirety of Magnolia's front façade measures more than 35 feet tall; and

(2) If the 21st Street Height Standard does not apply to Magnolias, then Magnolias is subject to the standard 45-foot height limitation. Under this standard, it is also possible that the building is currently nonconforming because the building may measure more than 45 feet tall.

¹ Zoning Ordinance Article 15, Definitions. Building, height of. The vertical distance from the average finished grade or from the average level of the finished grade at the front building line, if higher, to the highest point of the coping of a flat roof, or to the deck line or highest point of coping or parapet of a mansard roof, or to the mean height level between eaves and ridge for gable, hip, shed, and gambrel roofs. When the highest wall of a building with a shed roof is within 35 feet of a street, the height of such building shall be measured to the highest point of coping or parapet.

ii. <u>John J. Dillon / Adams Mill building</u>: Planning Commissioner Stinnette measured the height of the Adams Mill building as 42.66 feet, while a public speaker opined that it was taller than 45 feet. This building is reported to be four stories, however the top story is set back farther from the street than the lower stories.

Prior to the 2008 Amendments, the height limit for private buildings was "three stories and 45 feet" unless it was required to be shorter due to its proximity to a residential zoning district. Because the Adams Mill building is *four* stories, the "three story" requirement that existed prior to the 2008 Amendments would have caused the building to be nonconforming. And, if the Adams Mill building were taller than 45 feet, that height would constitute a second basis upon which to designate the building "nonconforming."

It appears as though the 2008 Amendments may have remedied the nonconforming status of the Adams Mill building by (1) removing the "three stories" requirement, thereby allowing four stories, and (2) allowing any privately owned building to be constructed to a height of 60 feet provided that the portion of the building's front façade that exceeded 35 feet in height was at least 10 feet farther back from the street than the first 35-feet of the front façade. Upon observation, the top floor of the Adams Mill building is set back farther from the street than the lower portions of the building; however, without accurate measurements, it is not possible to say whether the building conforms to the height standards adopted under the 2008 Amendments currently in effect. In other words, it is unclear whether the proposed Ordinance, as recommended by the Planning Commission, will cause the Adams Mill building to convert from a conforming building to a non-conforming building, or whether this building is already nonconforming under the current ordinance and will therefore suffer no negative effect from adoption of the proposed "C-4 height standards" amendments.

What is the practical effect of being "nonconforming"?

Nonconforming buildings can continue to be used for all lawful purposes, and can be expanded so long as the expansion does not increase the degree of nonconformity. For example, when a building is of nonconforming height (ie; taller than the Zoning Ordinance allows), then such a building cannot be made taller but can be made wider.

The problem tends to arise when a nonconforming building is destroyed in whole or in part. The question becomes, can it be re-built to its pre-existing condition? Commercial lenders may be reluctant to provide loans on buildings that cannot be rebuilt to their pre-existing condition, if destroyed, given that the building and its tenant revenue stream acts as collateral to secure the loan. The Town Zoning Ordinance, Article 5, Section 5 allows a nonconforming structure to be rebuilt to its original nonconforming condition if it is destroyed by natural disaster, act of God, or accidental fire, provided that the structure cannot be built to remove such nonconformity.² At least one commercial lender indicates that the level of uncertainty created for lenders by the conditional *italicized* language in Article 5, Section 5 could negatively impact the ability of an owner of a nonconforming structure to obtain a loan or to sell the property.

Again, without knowing for certain whether any existing buildings become nonconforming as a result of the proposed amendments, it is not clear whether "nonconformity" is a problem. Staff could perform additional research on this subject if requested by Town Council. If the Town Council wished to remove the uncertainty in Article 5, Section 5, it could initiate an amendment to the text of Article 5, Section 5 to clarify that nonconforming structures can be rebuilt *to their pre-existing condition* if damaged or destroyed.

FINDINGS:

A vote to adopt a zoning ordinance provision should be based upon findings that explain how the ordinance will serve the public necessity, convenience, general welfare, and good zoning practices. Below are findings upon which a vote to adopt Ordinance 17-09-01 can be based. Town Council may use these findings, formulate its own findings, or use any combination thereof:

1. That the current height standard for the C-4 zoning district allows up to 50% of the front façade of a building abutting 21^{st} Street to measure up to 65 feet in height, which height is both out of scale with the narrow street, and allows for a density that is too high to be compatible with the small town character of Purcellville.

² Zoning Ordinance Article 5, Section 5: "The owner of any residential or commercial building damaged or destroyed by a natural disaster or other act of God shall be permitted to repair, rebuild, or replace such building to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance as provided in § 15.2-2310 of the Code of Virginia, 1950, as amended. If such building is damaged greater than 50 percent and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. ... For purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God." (Emphasis Added)

- 2. That the current height standard for the C-4 zoning district allows significant portions of buildings abutting 21st Street to measure up to 75 feet in height, when those portions are located at least 10 feet behind the front façade. A building that measures 75 feet at a point that is only 10 feet away from the front façade is out of scale with the narrow street, and allows for a density that is too high to be compatible with the small town character of Purcellville.
- 3. That the current height standard for the C-4 zoning district allows a building abutting East O Street to measure up to 65 feet in height, which height is both out of scale with the narrow street, and allows for a density that is too high to be compatible with the small town character of Purcellville.
- 4. That the current height standard in the C-4 zoning district allows the Zoning Administrator to modify the maximum height allowed in the C-4 zoning district upon (a) recommendation of the Board of Architectural Review, and (b) a finding that the modified height better accomplishes the purpose and intent of the district. The authority to modify the maximum heights in the C-4 zoning district should rest solely with the legislative body, and should be removed from the Zoning Administrator.
- 5. That the current height standard for the C-4 zoning district allows any building in the C-4 zoning district to be erected to a height of 60 feet so long as the front façade of the building over 35 feet shall be set back at least 10 additional feet from the front façade or front property line, whichever is the greater distance from the public street; that such 60-foot height limitation, if widely implemented in the C-4 zoning district, will create a community that is both out of scale with the generally narrow streets located within the C-4 zoning district, and that is too dense to be compatible with the small town character of Purcellville.
- 6. That a 60-foot maximum height is appropriate for both public and semi-public buildings in the C-4 zoning district, because the increased height of these buildings symbolizes their cultural importance.

MOTIONS:

In order to take action at the public hearing, Town Council will first need to approve, by at least a two-thirds vote of those present and voting, a motion to suspend the Council's

rules of procedure. Thereafter, a subsequent motion can be adopted. Suggested motions are below:

Approval

Based upon the findings contained in the September 12, 2017 Staff Report to Town Council, I move that the Purcellville Town Council adopt Ordinance 17-09-01, which amends the C-4 Zoning District Height Standards set forth in Article 4, Section 9.8 of the Zoning Ordinance to: (a) lower the maximum building heights in the C-4 zoning district, (b) remove Zoning Administrator authority to modify maximum building heights in the C-4 Zoning District, and (c) add height regulations in the C-4 Zoning District that are particular to public and semipublic buildings.

-OR-

Disapproval

I move that the Purcellville Town Council vote to deny Ordinance 17-09-01 for the following reasons:

- 1.
- 2.

-OR-

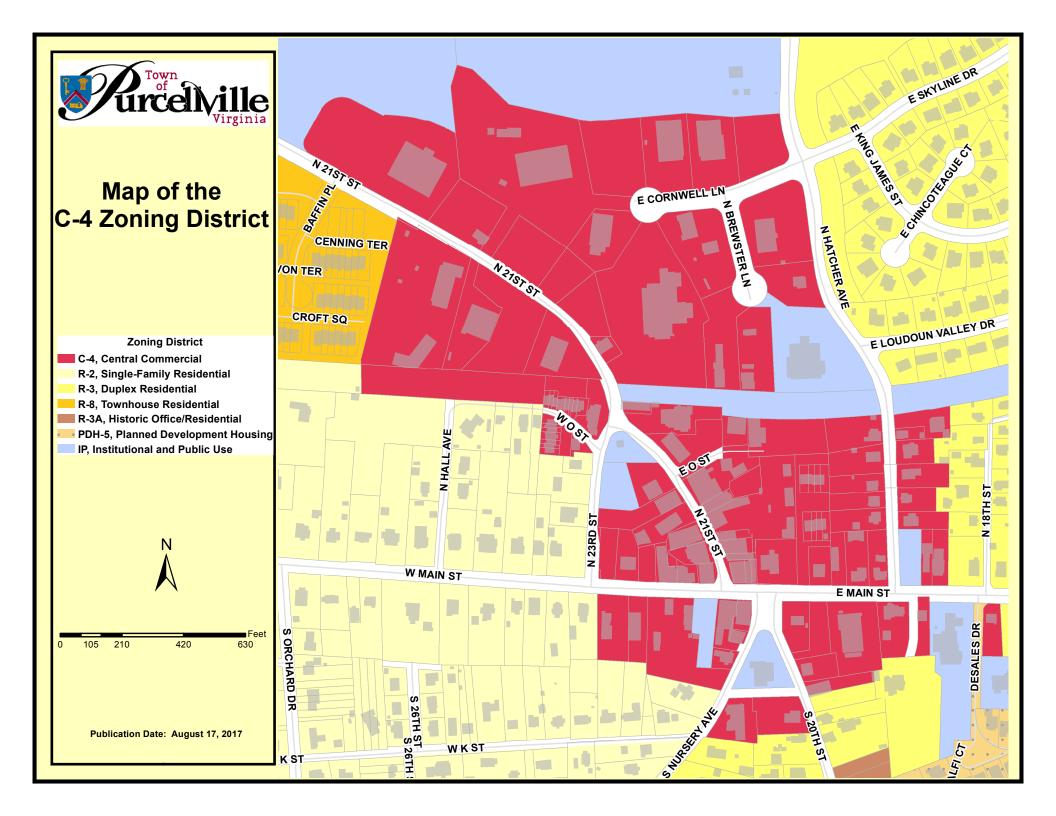
Modification

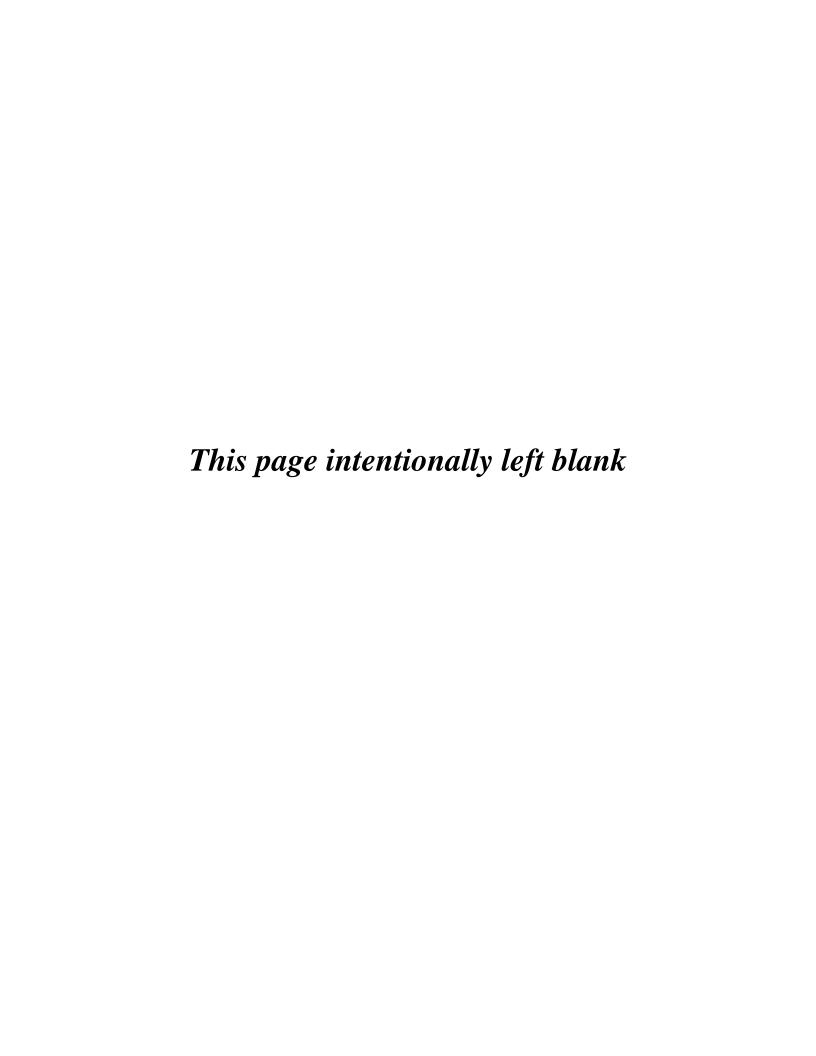
I move that the Purcellville Town Council direct staff to make the following changes to proposed Ordinance 17-09-01, and return the amended Ordinance to the next Town Council meeting for action:

- 1.
- 2.

ATTACHMENTS:

- 1. Map of C-4 Zoning District
- 2. Draft Ordinance 17-09-01
- 3. Planning Commission Staff Report for meeting on April 20, 2017 (without attachments)
- 4. Minutes of Planning Commission meeting on April 20, 2017
- 5. Planning Commission Staff Report for meeting on May 4, 2017 (*without attachments*)
- 6. Minutes of Planning Commission meeting on May 4, 2017
- 7. Resolution 16-10-02
- 8. Minutes of Town Council meeting on March 28, 2017





TOWN OF PURCELLVILLE

IN

LOUDOUN COUNTY, VIRGINIA

ORDINANCE NO. 17-09-01 PRESENTED: SEPTEMBER 12, 2017

ADOPTED:

AN ORDINANCE: AMENDING THE TOWN OF PURCELLVILLE ZONING ORDINANCE, ARTICLE 4 ("DISTRICT REGULATIONS"), SECTION 9 ("C-4 CENTRAL COMMERCIAL DISTRICT"), SUBSECTION 9.8 ("HEIGHT STANDARDS"), TO REDUCE THE MAXIMUM BUILDING HEIGHTS ALLOWED IN THE C-4 ZONING DISTRICT UNDER VARIOUS CONDITIONS, INCLUDING REMOVAL OF ZONING ADMINISTRATOR AUTHORITY TO MODIFY MAXIMUM BUILDING HEIGHTS IN THE C-4 ZONING DISTRICT, AND SPECIFYING HEIGHT PARTICULAR TO PUBLIC AND SEMI-PUBLIC BUILDINGS IN THE C-4 ZONING DISTRICT

- WHEREAS, on October 11, 2016, the Purcellville Town Council ("Town Council") adopted Resolution number 16-10-02, which initiated an amendment to the Purcellville Zoning Ordinance, Article 4, Section 9.8 to lower the maximum building heights in the C-4 zoning district under various conditions, and to refer such amendment to the Purcellville Planning Commission ("Planning Commission") for preparation; and
- WHEREAS, on March 16, 2017, the Planning Commission forwarded a draft amendment of Article 4, Section 9.8 to the Town Council for its review and comment; the Planning Commission's draft amendment reduced the maximum building height in the C-4 zoning district, removed the Zoning Administrator's authority to modify the maximum building heights, and added height regulations that are specific to public and semi-public buildings; and
- WHEREAS, on March 28, 2017, the Town Council reviewed and discussed the draft text amendment. Town Council inquired about whether the amendments would create nonconforming structures, and staff responded that more research would be done in that regard. The Town Council requested no changes to the draft amendments, and the amendments were scheduled for a public hearing before the Planning Commission; and

AN ORDINANCE:

AMENDING THE TOWN OF PURCELLVILLE ZONING ORDINANCE, ARTICLE 4 ("DISTRICT REGULATIONS"), SECTION 9 ("C-4 CENTRAL COMMERCIAL DISTRICT"), SUBSECTION 9.8 ("HEIGHT STANDARDS"), TO REDUCE THE MAXIMUM BUILDING HEIGHTS ALLOWED IN THE C-4 ZONING DISTRICT UNDER VARIOUS CONDITIONS, INCLUDING REMOVAL OF ZONING ADMINISTRATOR AUTHORITY TO MODIFY MAXIMUM BUILDING HEIGHTS IN THE C-4 ZONING DISTRICT, AND SPECIFYING HEIGHT PARTICULAR TO PUBLIC AND SEMI-PUBLIC BUILDINGS IN THE C-4 ZONING DISTRICT

- **WHEREAS,** on April 20, 2017, the Planning Commission held a duly advertised public hearing to receive comments on the proposed amendments; and
- WHEREAS, on May 4, 2017, upon a finding that reducing the maximum building heights in the C-4 Zoning District will serve the public necessity, convenience, and general welfare, the Planning Commission voted to forward the proposed amendments to the Town Council with a recommendation of approval, subject to two changes that were later incorporated into the text and are now shown in the text of this Ordinance; and
- WHEREAS, for the reasons set forth in the staff report to the Town Council dated September 12, 2017, the Town Council finds that the general welfare, public necessity and convenience, and good zoning practice require adoption of the amendments to the Purcellville Zoning Ordinance as initiated by the Town Council, as recommended for approval by the Planning Commission, and as set forth in this Ordinance.

THEREFORE, the Council of the Town of Purcellville, Virginia hereby ordains:

Section 1. That Article 4, Section 9.8 of the Purcellville Zoning Ordinance is hereby amended and re-enacted to add the language shown as underlined text and delete the language shown as strikethrough text, as follows:

9.8 Height standards.

Buildings may be erected up to 45 feet in height provided except that:

- 1. Any business building or part of such building which is located within 50 feet of any residential district shall not exceed 35 feet in height.
- 2. A public or semi-public building such as a school, church, or library, may be erected to a maximum height of 60 feet provided that required front, side and rear yards shall be increased one foot for each foot in height over 50 feet. Any building may be erected

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to a height of 60 feet provided that the front façades of the building above 35 feet shall be set back at least ten additional feet from the front façade or front property line, whichever is greater distance from the public street.

3. Notwithstanding the provisions of Section 9.8.2., for properties in common ownership that abut North 21st Street, the building height at the front façade or the front property line, whichever is the greater distance from the public street, may be up to 35 feet in height; and up to 50 percent of the width of the front façade may be up to 65 feet in height, and those portions of the building greater than ten feet behind the front façade maybe a maximum of 75 feet in height.

For adjacent properties in common ownership that exceed an aggregate of two contiguous acres in size located in the C-4 district that abut East "O" Street, the maximum building height is 65 feet.

- <u>3.</u> <u>4.</u> Church spires, belfries, cupolas, monuments, water towers, chimneys, flues, and flag poles of any height, and television antennas up to 125 feet in height, are exempt from height regulations. Parapet walls may be up to <u>a maximum of 4 four</u> feet above the height of the building on which the walls rest.
- 5. The zoning administrator may grant an administrative modification of these height limitations upon recommendations of the board of architectural review, which shall include a written explanation of how any such modification will better accomplish the purpose and intent of the district.
- **Section 2.** That all prior ordinances in conflict herewith are hereby repealed.
- **Section 3.** That if any provision or any section of this ordinance shall be held by a court of competent jurisdiction to be invalid, void, or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

AN ORDINANCE:

AMENDING THE TOWN OF PURCELLVILLE ZONING ORDINANCE, ARTICLE 4 ("DISTRICT REGULATIONS"), SECTION 9 ("C-4 CENTRAL COMMERCIAL DISTRICT"), SUBSECTION 9.8 ("HEIGHT STANDARDS"), TO REDUCE THE MAXIMUM BUILDING HEIGHTS ALLOWED IN THE C-4 ZONING DISTRICT UNDER VARIOUS CONDITIONS, INCLUDING REMOVAL OF ZONING ADMINISTRATOR AUTHORITY TO MODIFY MAXIMUM BUILDING HEIGHTS IN THE C-4 ZONING DISTRICT, AND SPECIFYING HEIGHT PARTICULAR TO PUBLIC AND SEMI-PUBLIC BUILDINGS IN THE C-4 ZONING DISTRICT

Section 4. That this ordinance shall be effective upon its adoption.

PASSED THIS DAY OF SEPTEMBER 2017.	
	Kwasi Fraser, Mayor
	Town of Purcellville
ATTEST:	
Diana Hays, Town Clerk	_